

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

William J. Carey

v.

Civil No. 05-cv-010-SM

Kristi L. Eglody

O R D E R

Ms. Eglody's counsel has moved for a court supervised deposition of plaintiff and for an order of transport. At the pretrial conference in Carey v. Manchester Police Department, 05-cv-293-JD, Attorney Meagher requested to be permitted to be present and question Mr. Carey on matters relevant to that case. Mr. Curran, who is defense counsel in Carey v. Hillsborough County Department of Corrections, 05-cv-274-PB, may also wish to participate if he feels there are overlapping issues and/or facts.


Carey objects claiming that such a deposition (1) would violate his Fifth Amendment rights and (2) that allowing counsel to depose him when he cannot afford to depose his opponents denies him equal protection under the Fourteenth Amendment. Nothing in the Fourteenth Amendment or the federal rules denies a party the right to take a deposition because the other parties'

poverty prevents that party from deposing someone. Furthermore, the Fifth Amendment rights of Carey do not preclude the deposition nor require its postponement.

Carey brought these suits. Defendants are entitled to depose him. Carey has the right to invoke the Fifth as to each question which could incriminate him. If he chooses to do so I will rule on each such invocation whether the matter could incriminate him. Defendants, of course, are entitled at trial to a jury instruction with respect to the adverse inference to be drawn from Carey's invocation of the Fifth.

The motion (document no. 59) is granted. Counsel are to agree to a date(s) among themselves, make arrangements with my scheduling clerks and an order for transport will issue. The deposition will be taken in Courtroom A.

SO ORDERED.


James R. Muirhead
United States Magistrate Judge

Date: March 24, 2006

cc: William J. Carey, *pro se*
Corey M. Belobrow, Esq.
Robert J. Meagher, Esq.
John A. Curran, Esq.